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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,820	11/16/2001	Darin Prizzi	PRIZZI - 2	8704

7590

08/14/2002

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BY DMV

EXAMINER

KING, ANITA M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/993,820

Applicant(s)

PRIZZI, DARIN

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This is the first office action for application number 09/993,820, Towel Holder, filed on November 16, 2001.

***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said hinge plates" in line 11. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,611,123 to Prizzi. Prizzi discloses in combination a releasable tube holder (10) and a longitudinal support (40), the tube holder comprising: a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16, 18) joined together at across one pair of split edges (20) and separated by a second pair of split edges (20), each of the clamping members provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, the clamping member halves being hingedly connected by a hinge member (26) on along one pair of the split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi in view of U.S. Patent 6,158,095 to Lassiter. Prizzi discloses in combination a releasable tube holder (10) and a longitudinal support (40), the tube holder comprising: a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16, 18) joined together at across one pair of split edges (20) and separated by a second pair of split edges (20), each of the clamping members provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, the clamping member halves being hingedly connected by a hinge between the first pair of split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members; the longitudinal support supporting a towel (38); the plastic tube having an interior surface (36) which has been serrated; wherein the support is a beach chair having a longitudinal top support. Prizzi discloses the claimed invention except for the limitation of the hinge being a living hinge. Lassiter teaches that it is known in the clamping art to have a clamp (14) including clamping members, a lever (16) connected to one of the clamping halves by a living hinge (Col. 1, line 33ff) to activate opening and closing of the opposed clamping members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the hinge in Prizzi to have been a living hinge as taught by Lassiter for the purpose of providing an alternative mechanical

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equivalent means for opening and closing the holder and to minimize the cost to manufacture the holder.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi. Prizzi discloses the claimed invention except for the limitation of the plastic tube being formed of polypropylene. Prizzi discloses that the plastic tube is formed from polyvinyl chloride or similar plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the plastic in Prizzi to be polypropylene for the purpose of providing an alternative mechanical equivalent material of similar rigidity.

Claims 6, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi in view of U.S. Patent 6,419,193 to Rodriquez. Prizzi discloses the claimed invention except for the limitations of the hinge having a hinge pin and a torsion spring and the hinge member extending along one pair of the straight split edges. Rodriquez teaches that it is known in the clamp art to have a cylindrical extension (45) being split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members, at least one handle (40) positioned on the clamping member halves opposite another handle (42), the halves being hingedly interconnected with a hinge pin (@43) connected by a hinge on each clamp half, a torsion spring (46), the hinge activates opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to a support (23') by applying and removing pressure on the oppositely positioned handle members; wherein the hinge extends along and in the direction of the one pair of straight across

split edges; and wherein the hinge extends axially along the first pair of split edges. It would have been obvious to one having ordinary skill in the art the time the invention was made to have modified the hinge in Prizzi to have included the hinge as taught by Rodriquez for the purpose of providing an alternative mechanical equivalent means for opening and closing the holder on the support.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi combined with Rodriquez and in further view of Lassiter. Prizzi combined with Rodriquez disclose the claimed invention except for the limitation of the hinge member being a living hinge. Lassiter teaches that it is known in the clamping art to have a clamp (14) including clamping members, a lever (16) connected to one of the clamping halves by a living hinge (Col. 1, line 33ff) to activate opening and closing of the opposed clamping members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the hinge in Prizzi to have been a living hinge as taught by Lassiter for the purpose of providing an alternative mechanical equivalent means for opening and closing the holder and to minimize the cost to manufacture the holder.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 139,285 to Wheeler

U.s. Patent 1,088,602 to Marx

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U.S. Patent 2,149,971 to Liebmann

U.S. Patent 2,596,635 to Wolfe

U.s. Patent 3,500,789 to Keats

U.S. Patent 4,722,120 to Lu

U.S. Patent D305,402 to Novak

U.s. Patent 5,829,832 to Molee et al.

U.S. Patent 6,192,619 to Pirkle

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-3597 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Anita M. King  
Primary Examiner  
Art Unit 3632

August 8, 2002